

## **REMARKS**

This amendment is responsive to the Non-Final Office Action mailed on October 21, 2009. In view of the following remarks, Applicant respectfully submits that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

### **Rejections under 35 USC §103**

The Examiner has rejected claims 26-28 and 45-51 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,315,553 to Sachdeva et al. (*Sachdeva*) in view of U.S. Patent No. 5,991,728 to DeBusk et al. (*DeBusk*). Of these claims, claims 26, 46 and 47 are independent claims.

Beginning with independent claim 26, this claim requires “storing in the database, information identifying each of the practitioners of the plurality and information relating to treatment plan options including default preferences as to orthodontic prescriptions associated with each of the respective practitioners.” In the Final Office Action mailed March 31, 2009, the Examiner stated on page 3 that “storing in the database information identifying information relating to treatment plan options including information about orthodontic appliance hardware” was disclosed in *Sachdeva* at col. 5, ll. 46-67.

This passage of *Sachdeva* discusses a data base of orthodontic parameters including such items as age, gender, race, physical geometry of a patient’s teeth, mouth structure, bone structure, type of malocclusion, ethnicity, function, etc. *Sachdeva*, col. 5, ll. 46-50. Further, this passage discusses that orthodontic parameters can include any human characteristic related to orthodontics that effect tooth positioning, movement, function, stability, appearance, structure of the bones, teeth, gums, pathology, patient’s knowledge, medical history, dental history, etc. and any medical characteristics of the orthodontic apparatus that may be stored in a data base system to enhance prediction of a patients orthodontic treatment. *Sachdeva*, col. 5, ll. 50-58. The orthodontic parameters may also include case histories of previously treated patients that are used to determine normal expected treatments, mechanical aspects of the brackets, bands, and wire, mean deviation from normalized treatments, and other statistical information regarding the normalized treatments, and other statistical information regarding the normalized

treatment of an orthodontic patient. *Sachdeva*, col. 5, ll. 58-64. Additionally, electronic patient records of new patients including treatment of those new patients may also be added to the database. *Sachdeva*, col. 5, ll. 64-67.

The Examiner stated on pages 3-4 of the Final Office Action that *Sachdeva* fails to teach storing in the database, information identifying the practitioners and information relating to treatment plan options including preferences as to one or both of orthodontic prescriptions and orthodontic appliance hardware associated with the respective practitioners. Applicant agreed with the Examiner's assessment that orthodontic appliance hardware was disclosed by *Sachdeva*, and also agreed with the Examiner's assessment that preferences to orthodontic prescriptions is not disclosed by *Sachdeva*. Accordingly, in the after final response, Applicant amended claim 26 to focus the "treatment plan options" to include "default preferences as to orthodontic prescriptions associated with each of the respective practitioners." Applicant further established that the Examiner's secondary reference, *DeBusk*, also failed to remedy the deficiency in *Sachdeva* identified by the Examiner.

In the present Office Action, the Examiner now states on page 7 that the primary reference, *Sachdeva*, does teach a database containing information relating to treatment plan options including preferences as to orthodontic prescriptions and that *DeBusk* is only used to teach the limitation of a database containing information, including treatment plan options and preferences about a plurality of practitioners. The Examiner has thus changed her position with respect to both references. However, the Examiner's position with respect to *Sachdeva* is incorrect.

The Examiner now points to the same passage of *Sachdeva*, col. 5, ll. 46-67, which she previously stated disclosed "storing in the database information identifying information relating to treatment plan options including information about orthodontic appliance hardware" for the disclosure of storing default preferences as to orthodontic prescriptions, after admitting that *Sachdeva* fails to disclose storing default preferences for orthodontic prescriptions. Based on the summary of this passage above, Applicant submits that the Examiner's new assessment is in error because nowhere in this passage, nor anywhere else in *Sachdeva*, does *Sachdeva* disclose "storing . . . information identifying each of the practitioners of the plurality and information relating to treatment plan options including default preferences as to orthodontic prescriptions associated with each of the respective practitioners" in a database.

Moreover, in rejecting independent claim 46, the Examiner, on page 4 of the Office Action, contends that *Sachdeva* discloses “providing an orthodontic appliance for an individual patient having a configuration that includes appliance parameters based at least in part on predetermined treatment plan options including information about prescriptions associated with the practitioner” at col. 10, ll. 45-52. Again the Examiner’s assessment of the disclosure is incorrect. This passage of *Sachdeva* discloses attempting to match a needed treatment for a current patient with a similar treatment of a previous patient that is stored in a database to integrate into the treatment plan of the current patient. If no match is found in the database, the orthodontic practitioner uses their expertise to set up an initial treatment plan. There is no disclosure here, nor anywhere else, related to “storing in the database, . . . information relating to treatment plan options including default preferences as to orthodontic prescriptions associated with each of the respective practitioners.”

Consequently the combination of *Sachdeva* and *DeBusk* still fail to disclose all of the elements of Applicant’s independent claim 26. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness with respect to independent claim 26 and Applicant respectfully requests that the rejections of claim 26, and of claims 27, 28, and 45 which depend therefrom, be withdrawn.

Independent claim 46 requires “providing an orthodontic appliance for an individual patient having a configuration that includes appliance parameters based at least in part on predetermined treatment plan options including default preferences as to orthodontic prescriptions associated with the practitioner that have been retrieved from a previously created and maintained database.” As set forth above with respect to independent claim 26, *Sachdeva* fails to disclose a database including default preferences as to orthodontic prescriptions associated with the practitioner as required by claim 46. Also as set forth above, *DeBusk* does not disclose a database including default preferences as to orthodontic prescriptions associated with the practitioner as the Examiner explicitly states on page 7 of the Office Action that *DeBusk* is only being used to “teach the limitation of a database containing information, including treatment plan options and preferences, about a plurality of practitioners.” Therefore, the combination of *Sachdeva* and *DeBusk* fails to disclose all of the elements of Applicant’s independent claim 46. Consequently, the Examiner has failed to establish a *prima facie* case of

obviousness with respect to claim 46 and Applicant respectfully requests that the rejection of claim 46 be withdrawn.

Independent claim 47 requires “providing to the orthodontic practitioner a custom orthodontic appliance for orthodontic treatment of the individual patient designed in part based on patient-specific information associated with the request and in part based on default information of treatment preferences including default preferences as to orthodontic prescriptions associated with the requesting orthodontic practitioner and retrieved from a database” similar to claim 46 above. Again the Examiner cites col. 5, ll. 46-67 and col. 10, ll. 45-52, which, as established above with respect to claims 26 and 46, fails to disclose a database including default preferences as to orthodontic prescriptions associated with an orthodontic practitioner. Therefore the combination of *Sachdeva* and *DeBusk* fails to disclose all of the elements of Applicant’s independent claim 47. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 47 and Applicant respectfully requests that the rejections of claim 47, and of claims 48-51 which depend therefrom, be withdrawn.

As a final matter, Applicant further notes that the remaining dependent claims recite additional features that further distinguish these claims from the reference cited by the Examiner. However, in the interest of prosecutorial economy, these remaining claims will not be addressed separately herein.

### **Conclusion**

Applicant has made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing amendments to the claims and remarks given herein, Applicant respectfully believes this case is in condition for allowance and respectfully requests allowance of the pending claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner’s prompt attention to this matter is appreciated.

Applicant is of the opinion that no additional fee is due as a result of this Amendment. Payment of all charges due for this filing is made on the attached Electronic Fee Sheet. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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Date

/Charles R. Figer, Jr./  
Charles R. Figer, Jr.  
Reg. No. 62,518

WOOD, HERRON & EVANS, L.L.P.  
2700 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202  
Telephone: (513) 241-2324  
Facsimile: (513) 241-6234

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